

ST 04-0029-GIL 01/29/04 ROLLING STOCK EXEMPTION

In general, parts added to a motor vehicle after it has been purchased do not qualify for the CDF Sales Tax Exemption. However, such parts may qualify for the Rolling Stock Exemption. See emergency rules for 86 Ill. Adm. Code 130.340 & 130.341. (This is a GIL.)

January 29, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 30, 2003, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of our client ('Taxpayer'), we respectfully request the Illinois Department of Revenue ('Department') to issue a General Information Letter pursuant to 2 Ill. Adm. Code Section 1200.120 with regard to our questions on the following factual situation.

FACTS

Taxpayer provides full service truck and trailer leasing to customers. Its affiliate ('Title Holder'), a business trust incorporated in STATE, is the titleholder of leases and vehicles. Taxpayer enters into true leases of the trucks with unrelated third parties as an agent for Title Holder. Title Holder purchases vehicles (truck tractors and cab/chassis units) and trailers for use in Illinois directly from original equipment manufacturers (OEMs) primarily located outside the state of Illinois. The OEMs send Title Holder a manufacturer's statement of origin ('MSO') on the day they ship the purchased vehicles to installers designated by Title Holder. The installers add components to the vehicles as directed by the Title Holder. Title Holder separately negotiates and contracts for vehicle 'components', i.e. lift gates, bodies/coaches, refrigeration units, etc., with other suppliers. The vehicle components suppliers are located outside the state of Illinois and are unrelated to the OEMs.

Title Holder has filed Form RUT-50, Vehicle Use Tax Transaction Return, to report and pay tax on their vehicle purchases and Form ST-1, Sales and Use Tax Return, to report and pay tax on the vehicle component purchases.

Recently, amendments have been made to the retailers' occupation tax and use tax. Effective July 1, 2003, purchases of a second division motor vehicle or trailer with a gross vehicle weight of more than 8,000 pounds generally are exempt from sales tax if the Commercial Distribution Fee ('CDF') administered by the Secretary of State is paid. Under the Illinois Statutes, vehicles and trailers are defined as follows:

Motor vehicle: Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power and motorized wheelchairs. For this Act, motor vehicles are divided into two divisions:

First Division: Those motor vehicles which are designed for the carrying of not more than 10 persons.

Second Division: Those motor vehicles which are designed for carrying more than 10 persons, those motor vehicles designed or used for living quarters, those motor vehicles which are designed for pulling or carrying freight, cargo or implements of husbandry, and those motor vehicles of the First Division remodeled for use and used as motor vehicles of the Second Division. 625 ILCS 5/1-146.

Trailer. Every vehicle without motive power in operation, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle. 625 ILCS 5/1-209.

Taxpayer's parent company is contemplating the formation of a purchasing company ('Seller'), to be based in Illinois. Seller will procure Illinois vehicles for resale solely to Title Holder. Seller will also procure components to be installed on vehicles prior to selling them to Taxpayer. Seller will report and pay the applicable retailer's occupation taxes to the Department.

For the purpose of this request, please assume all vehicles purchased will have a gross vehicle weight of more than 8,000 pounds and the CDF will be paid on all vehicles.

Because of the new statute changes, we are requesting the Department's insight on the sales and use tax consequences of the transactions as currently conducted and under the proposed restructuring. It is our understanding that under the current statutes, vehicles components purchased from out of state vendors in a separate transaction from the vehicle purchase are considered 'parts' and are subject to use tax unless the purchase qualifies for the rolling stock exemption. To qualify for the rolling stock exemption, at least fifty-one percent of a motor vehicle's total trips for each consecutive twelve-month period *must* carry persons or property for hire; *and* either cross the Illinois border or occur outside Illinois. However, under the proposed restructuring, the same

vehicle components that are permanently affixed to the vehicle Title Holder has purchased from Seller is exempt from retailers' occupation tax.

QUESTIONS

1. Whether Title Holder's purchases of vehicle components, which are attached to separately purchased cab/chassis units on or after July 1, 2003, are exempt from use tax?
2. Whether Seller's sale of vehicle components attached to a vehicle will be exempt from retailers' occupation tax under the new CDF exemption if the purchase otherwise qualifies for the exemption?

Please contact me with any questions or schedule a meeting to discuss any aspect of this inquiry. We appreciate your response on this inquiry as soon as possible.

DEPARTMENT'S RESPONSE:

Please see the Department's Emergency Rules regarding the CDF Sales Tax Exemption. 86 Ill. Adm. Code 130.341. In general, parts added to a motor vehicle after it has been purchased do not qualify for the CDF Sales Tax Exemption. Subsection (e) of Emergency Rule Section 130.341 specifically provides that parts do not qualify for the CDF Sales Tax Exemption. However, such parts may qualify for the Rolling Stock Exemption. See also the emergency rules filed by the Department for the Rolling Stock Exemption. 86 Ill. Adm. Code 130.340. Although the emergency rules regarding the CDF Sales Tax Exemption and the changes to the Rolling Stock Exemption have expired, they can provide guidance on how the Department interprets these exemptions.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk